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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/932,815	08/17/2001	Lee S. Pearson	10541-607	5818

7590 07/15/2004

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EXAMINER

CHANG, VICTOR S

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 07/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/932,815

Applicant(s)

PEARSON ET AL.

Examiner

Victor S Chang

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*[Handwritten signature]*

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 7-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. The Examiner has carefully considered Applicants' amendments and remarks filed on 5/10/2004. Applicants' amendments to the specification, and claims 7 and 14 have been entered.
2. A new Oath/Declaration, filed 6/10/2004, has been entered.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Rejections not maintained are withdrawn. In particularly, in view of applicants' argument that "Figures 7 and 10 explicitly show that the outer surface of the foam layer 162 is substantially less than the outer surface of the U-shaped end portion 151." (Remarks, page 7, third paragraph), the rejection over Ito et al. (US 5395668) is withdrawn. However, Applicants' arguments are moot in view of the new grounds of rejection as follows.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
6. Claim 15 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one

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skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

It is noted that the in a response (10/23/2003) to the Restriction/Election requirement, Applicants has submitted a new claim 15, which recites, *inter alia*, "wherein the at least one flexible web includes a first flexible web coupled with a first surface of the soft material and a second flexible web coupled with a second surface of the soft material". However, Applicants fail to point out any support for the recited elements, nor does the Examiner find the aforementioned element disclosed in the specification. As such, claim 15 appears to be "new matter". Applicants are required to either provide an explicit support in the specification, or cancel the new matter in the next communication. It should be noted that "New matter" must be excluded from preliminary amendments since preliminary amendments do not enjoy original disclosure status. See MPEP § 608.04(b).

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 7-12, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0 517 615 (Derwent Abstract).

EP '615 is directed to a flexible cushion. In Fig. 6, EP '615 shows that the cushion comprises an external decorative fabric coating 3a, a flexible foam layer 3b, and a plastic hot melt adhesive film 3c, and an enclosing frame 8 and a backing 14. Further, the frame 8 and the backing 14 are formed by injection molding. Finally, Fig. 6 also clearly shows that height of portions of the surface of the external coating being either flush or greater than the top surface of the enclosing frame (rim).

Claims 7-12 lack novelty.

9. Claims 13, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0 517 615 (Derwent Abstract) in view of JP 05338095 (Derwent Abstract).

The teachings of EP '615 are again relied upon as set forth above.


For claims 13, 16 and 17, EP '615 is silent about the layers 3a and 3c being thermoplastic olefin material. However, it is noted that JP '095 is directed to a heat laminate used for covering chairs. The laminate comprises a layer of olefin resin blend (thermoplastic olefin material) coated onto a cloth or fabric to provide a good adhesivity (Derwent Abstract). As such, in the absence of unexpected results, it would have been obvious to one of ordinary skill in the art to select the olefin resin blend of JP '095 as the material for the layers 3a and 3c of EP '615, motivated by the desire to obtain a durable laminated cushion.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor S Chang whose telephone number is 571-272-1474. The examiner can normally be reached on 8:30 - 5:00.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Victor S Chang  
Examiner  
Art Unit 1771

7/9/2004

  
TERREL MORRIS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700